

Small Business Administration

§ 120.1830

advance request, as appropriate, is required.

(b) If the application is denied a second time, a second and final request for reconsideration may be submitted to the SBA Chief Financial Officer. The request must give specific reasons why the decline action should be reversed. All requests must be received within 30 days of the decline action.

(c) The decision of the SBA Chief Financial Officer is final.

§ 120.1830 What are the terms and conditions of an SBA loan to an SISMBD?

(a) *Loan structure.* Credit extensions under the SISMBD Loan Program will be in the form of revolving lines of credit loans that are fully collateralized by Guaranteed Portions and Certificates but with full recourse against the borrower. SISMBDs will obtain funds under the SISMBD Loan by requesting advances when needed to purchase Guaranteed Portions from SBA Lenders or Certificates from Registered Holders.

(b) *Loan amount.* There is no statutory limit to the maximum loan size for a loan to a SISMBD, subject to the discretion of the Administrator. SBA has determined that the minimum loan size will be \$10,000,000 and the maximum size of a SISMBD Loan at the time of loan approval will be equal to seventy-five percent (75%) of the total dollar amount of an SISMBD's purchases in the SBA Secondary Market during the twelve (12) month period of time immediately prior to SISMBD Loan Application receipt. The Director of the Secondary Market Lending Authority may approve a higher SISMBD Loan amount if he/she determines that additional lending capacity is essential to the continued participation of the SISMBD in the SBA Secondary Market in accordance with 120.1833(a).

(c) *Repayment terms.* The monthly payments of principal and interest on the Certificates that are pledged as collateral for the SISMBD Loan, any partial or full prepayments on such collateral, and any SBA Lender purchases of defaulted loans will be assigned by the SISMBD to SBA and will be paid by the Lender into a segregated account at the FTA under SBA's ownership and

control and applied to the SISMBD Loan. All proceeds from the sale of any pledged Collateral as described in §120.1880(b) in this Subpart K must be paid by the purchaser to SBA or its agent to reduce the loan balance before any collateral is released. To the extent that SBA is required to make a payment on its guaranty of a Certificate, SBA will reduce the SISMBD Loan balance by the amount of the guaranty payment.

(d) *Prepayments.* SISMBD Loans will be pre-payable in whole or in part at the option of the borrower.

(e) *Interest rate.* SISMBD Loans shall have variable interest rates not to exceed the Federal Funds target rate as established by the Federal Reserve Board of Governors plus 25 basis points. The first change may occur on the first calendar day of the month following the initial disbursement using the base rate of the Federal Funds rate established by the Federal Reserve Board of Governors in effect on the first business day of that month. After the initial interest rate change, changes may occur no more often than monthly on the first calendar day of each month.

(f) *Collateral.* All SISMBD Loans must be fully collateralized. As security for repayment of an SISMBD Loan, the SISMBD must pledge to SBA all Guaranteed Portions and Certificates (and the proceeds thereof) that it purchases with the SISMBD Loan proceeds and must grant SBA a first lien security interest in the Guaranteed Portions and Certificates (and the proceeds thereof). Additionally, the SISMBD must provide SBA with a collateral assignment, of the SBA Form 1086 (Secondary Market Participation Agreement) or SBA Form 1088 (Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate) for all Guaranteed Portions and Certificates purchased with SISMBD Loan proceeds. The SISMBD must also assign to SBA the payment of amounts due under the Guaranteed Portions and Certificates. All collateral documents must be executed and recorded and the first lien position verified before SBA will disburse funds under the SISMBD Loan. Substitution of collateral during the term of the loan generally will not

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be allowed. The SISMBD may not grant any junior security interests in the Collateral during the term of the SISMBD Loan.

(g) *Default.* If for any reason an SISMBD is unable to make payment to SBA when due or any other event of default as described in the Loan Agreements occurs, SBA may, among other things, terminate availability under the SISMBD Loan, accelerate the SISMBD Loan, demand payment in full, and avail itself of any and all rights and remedies available under the Loan Agreements or otherwise available under the law.

(h) *Term.* The SISMBD may continue to seek advances under an approved and fully documented SISMBD Loan until January 31, 2011. An SISMBD Loan maturity date must not exceed February 16, 2013.

(i) *On-going subsidy fee.* An annual fee will be collected monthly, based on the outstanding SISMBD Loan balance, pursuant to section 509(F) of the Recovery Act, to result in a cost of the direct loan of zero, as determined under the Federal Credit Reform Act of 1990, as amended. The funds generated by the fee serve as a reserve for program losses. The fee will be published in a notice by SBA prior to the commencement of the Program and from time to time thereafter. SBA will communicate the Ongoing Subsidy Fee to the systemically important broker-dealers.

(j) *Closing and execution of loan documents.* Prior to the expiration of the Commitment Letter, SBA will schedule a closing on the SISMBD Loan. At closing, the SISMBD will be required to execute Loan Agreements, including but not limited to, a loan agreement, promissory note, security agreement, custodial agreement and other documents as required in SBA's sole discretion.

(k) *Review prior to advances.* Prior to approving an advance request under an SISMBD Loan, SBA will require the SISMBD to represent and warrant that:

(1) There has been no material adverse change in the SISMBD's financial condition, ownership structure or control persons or the overall nature of business since the approval of the SISMBD's loan application and

(2) The SISMBD is not subject to any regulatory action and is not under civil or criminal investigation. SBA may conduct a review or require the SISMBD to provide information to verify the representations and warranties.

§ 120.1831 Is there a limit to the number of SISMBD Loans or advances that an SISMBD may request from SBA?

No, there is no limit to the frequency in which an SISMBD may borrow under the Secondary Market Loan Program unless the Administrator determines that doing so would create an undue risk of loss to SBA or the United States. In order to mitigate the risk of loss, SBA has determined that an SISMBD may request an unlimited number of loans or advances as long as the balance outstanding on the SISMBD Loan does not exceed the total dollar limit stated in the Commitment Letter. SISMBD Loans will be structured as a revolving line of credit.

§ 120.1832 What is the minimum and maximum SISMBD Loan advance amount?

There is no minimum or maximum loan advance amount. Because availability under the SISMBD Loan is capped as set forth in 120.1830, the amount of any loan advance cannot exceed the available credit identified in the Commitment Letter.

§ 120.1833 May an SISMBD request an increase in the loan amount?

(a) SBA will consider a request for an increase in the maximum amount of an SISMBD Loan as identified in the Commitment Letter if the applicant can show the increase is essential to its continued participation in the SBA Secondary Market.

(b) Applicants must request a loan increase by submitting an application to the Director of the Secondary Market Lending Authority by January 31, 2011.

§ 120.1834 What fees are associated with an SISMBD Loan?

The borrower must pay to SBA an On-going Subsidy Fee which will cover SBA's subsidy costs associated with the SISMBD Loan Program.